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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 27th September, 1965/*Asvina* 5, 1887 (*Saka*)

The following Act of Parliament received the assent of the President on the 25th September, 1965, and is hereby published for general information:—

THE COMPANIES (AMENDMENT) ACT, 1965

No. 31 of 1965

[*25th September*, 1965]

An Act further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Amendment) Act, 1965.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Amendment of section 1.

2. In section 1 of the Companies Act, 1956 (hereinafter referred to as the principal Act), in sub-section (*3*), the following further proviso shall be inserted at the end, namely:— 1 of 1956

"Provided further that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify.".

Amendment of section 2.

3. In section 2 of the principal Act,—

(*i*) in clause (*8*), after the word "deeds,", the word "vouchers," shall be inserted;

(*ii*) in clause (*30*), after the words "manager or secretary", the words "or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act," shall be inserted.

Amendment of section 10E.

4. In section 10E of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) The Board, with the previous approval of the Central Government, may, by order in writing, authorize the chairman or any of its other members or its principal officer (whether known as secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.".

Amendment of section 13.

5. In section 13 of the principal Act, in sub-section (*1*),—

(*i*) in clause (*b*), the word "and" shall be omitted;

(*ii*) for clause (*c*), the following clauses shall be substituted, namely:—

"(c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, the objects of the company;

(*d*) in the case of a company formed after such commencement,—

(*i*) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(*ii*) other objects of the company not included in sub-clause (*i*); and

(*e*) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend.".

Amendment of section 21.

6. To section 21 of the principal Act, the following proviso shall be added, namely:—

'Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.'.

Amendment of section 43A.

7. In section 43A of the principal Act, in sub-section (6), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) to a private company in which shares are held by one or more bodies corporate incorporated outside India, which or each of which, if incorporated in India, would be a private company within the meaning of this Act, if the Central Government, on an application made to it in this behalf by that private company, by order so directs; or".

Insertion of new section 68A.

8. After section 68 of the principal Act, under the sub-heading "*Prospectus*", the following section shall be inserted, namely:—

Personation for acquisition, etc., of shares.

"68A. (*1*) Any person who—

(*a*) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or

(*b*) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name,

shall be punishable with imprisonment for a term which may extend to five years.

(*2*) The provisions of sub-section (*1*) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person.".

Amendment of section 69.

9. In section 69 of the principal Act, for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank—

(*a*) until the certificate to commence business is obtained under section 149, or

(*b*) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company,

and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

In the event of any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees.".

Amendment of section 73.

10. In section 73 of the principal Act, in sub-section (5), for the words "permission shall not be deemed to be refused", the words "it shall not be deemed that permission has not been granted" shall be substituted.

Amendment of section 75.

11. In section 75 of the principal Act,—

(*a*) to clause (*a*) of sub-section (*1*), the following proviso shall be added, namely:—

"Provided that the company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment.";

(*b*) in sub-section (*3*), for the words "is inadequate, he may extend that period as he thinks fit", the following words shall be substituted, namely:—

"is or was inadequate, he may, on application made in that behalf by the company, whether before or after the expiry of the said period, extend that period as he thinks fit";

(*c*) in sub-section (*4*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that in case of contravention of the proviso to clause (*a*) of sub-section (*1*), every such officer, and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to five thousand rupees.".

Amendment of section 76.

12. In section 76 of the principal Act,—

(*a*) in sub-section (*1*)—

(*i*) in clause (*iii*), the word "and" occurring at the end shall be omitted;

(*ii*) in clause (*iv*), the word "and" shall be inserted at the end; and

(*iii*) after clause (*iv*), the following clause shall be inserted, namely:—

"(*v*) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.";

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) For the removal of doubts it is hereby declared that no commission shall be paid under clause (*a*) of sub-section (*1*) to any person on shares or debentures which are not offered to the public for subscription:

Provided that where a person has subscribed or agreed to subscribe under clause (*a*) of sub-section (*1*) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then, the company may pay commission to the first-mentioned person in respect of such subscription.".

Amendment of section 108.

13. In section 108 of the principal Act, after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) Every instrument of transfer of shares—

(*a*) shall be in the prescribed form and presented to the prescribed authority before it is signed by or on behalf of the transferor and the prescribed authority shall stamp or otherwise endorse thereon the date on which it is so presented, and

(*b*) shall be delivered to the company,—

(*i*) in the case of shares dealt in or quoted on a recognised stock exchange at any time before the date on which the register of members is closed in accordance with law for the first time after the date of such presentation,

(*ii*) in any other case, within two months from the date of such presentation.

(*1B*) Any instrument of transfer which is not in conformity with the provisions of sub-section (*1A*) shall not be accepted by a company—

(*a*) in the case of shares dealt in or quoted on a recognised stock exchange, after the expiry of six months of the

commencement of the Companies (Amendment) Act, 1965, or after the date on which the register of members is closed in accordance with law for the first time after such commencement, whichever is later;

(*b*) in any other case after the expiry of six months of such commencement.

(*1C*) The provisions of sub-section (*1A*) shall not apply to any shares deposited by any person with—

(*a*) the State Bank of India;

(*b*) any scheduled bank; or

(c) such banking company (other than a scheduled bank) or financial institution as may be approved by the Central Government by notification in the Official Gazette,

by way of security for the repayment of any loan advanced to, or for the performance of any obligation undertaken by, such person.

(*1D*) Notwithstanding anything in sub-section (*1A*) or sub-section (*1B*), where in the opinion of the Central Government it is necessary so to do to avoid hardship in any case, that Government may on an application made to it in that behalf, extend the periods mentioned in those sub-sections by such further time as it may deem fit; and the number of extensions granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament under section 638.".

Amendment of section 111.

14. In section 111 of the principal Act, except in sub-section (*4A*), for the words "the Central Government" or the words "that Government", wherever they occur, the words "the Tribunal" shall, in respect of any appeal made after the commencement of this Act, be substituted.

Amendment of section 149.

15. In section 149 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

"(*2A*) Without prejudice to the provisions of sub-section (*1*) and sub-section (*2*) a company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business—

(*a*) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, in relation to any of the objects stated in its memorandum in pursuance of clause (*c*) of sub-section (*1*) of section 13;

(*b*) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of sub-clause (*ii*) of clause (*d*) of sub-section (*1*) of the said section,

unless—

(*i*) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and

(*ii*) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary, in the prescribed form, that clause (*i*) or as the case may be, sub-section (*2B*) has been complied with;

and if the company commences any such business in contravention of this sub-section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

Explanation.—A company shall be deemed to commence any business within the meaning of clause (*a*) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 in relation to any of the objects referred to in the said clause.

(*2B*) Notwithstanding anything contained in sub-section (*2A*) where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Central Government may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting.".

16. In section 153B of the principal Act, in sub-section (*4*),— Amendment of section 153B.

(*i*) in clause (*b*), for the words "where the trust money invested in shares in, or debentures of, a company", the words "where the value of the shares in, or debentures of, a company, held in trust" shall be substituted;

(*ii*) the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—The expression "the value of the shares in, or debentures of, a company" in clause (*b*) means,—

(*i*) in the case of shares or debentures acquired by way of allotment or transfer for consideration, the cost of acquisition thereof, and

(*ii*) in any other case, the paid-up value of the shares or debentures.'.

Amendment of section 163.

17. In section 163 of the principal Act, in sub-section (*1*), in the proviso, in clause (*i*), the word "and" shall be inserted at the end and clause (*ii*) shall be omitted.

Amendment of section 174.

18. In section 174 of the principal Act, in sub-section (*1*), for the words "public company, and two members personally present in the case of a private company,", the words, brackets, figures and letter "public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company," shall be substituted.

Amendment of section 203.

19. In section 203 of the principal Act, in sub-section (*6*), the words, brackets and figures ', and for the purposes of the said sub-clause (*ii*), the expression "officer" shall include any person in accordance with whose directions or instructions the Board of directors of the company has been accustomed to act' shall be omitted.

Amendment of section 209.

20. In section 209 of the principal Act,—

(*a*) in sub-section (*1*)—

(*i*) in clause (*b*), the word "and" occurring at the end shall be omitted;

(*ii*) in clause (*c*), the word "and" shall be inserted at the end;

(*iii*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account;";

(*b*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(4) (*a*) The books of account and other books and papers shall be open to inspection by any director during business hours.

(*b*) The books of account and other books and papers shall be open to inspection during business hours—

(*i*) by the Registrar,

(*ii*) by any officer of Government authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof.

(*c*) The Registrar or such officer may during the course of inspection—

(*i*) make or cause to be made copies of the books of account and other books and papers,

(*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(*d*) In order to enable the Registrar or such officer to make an inspection of the books of account and other books and papers of the company, it shall be the duty of the company—

(*i*) to produce to the Registrar or such officer such books of account and other books and papers of the company as the Registrar or such officer may require,

(*ii*) otherwise to give to the Registrar or such officer all assistance in connection with the inspection which the company is reasonably able to give.";

(*c*) In sub-section (*4A*), after the words "preceding the current year", wherever they occur, the words "together with the vouchers relevant to any entry in such books of account" shall be inserted;

(*d*) in sub-section (*6*),—

(*i*) in clause (*a*), the following shall be inserted at the end, namely:—

"and all officers and other employees and agents [as defined in sub-section (*6*) of section 240 but excluding bankers, auditors and legal advisers] of such managing agent or secretaries and treasurers";

(*ii*) in clause (*c*), the word "and" occurring at the end shall be omitted;

(*iii*) in clause (*d*), the word "and" shall be inserted at the end;

(*iv*) after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) whether or not a company has a managing agent or secretaries and treasurers, every officer and other employee and agent (defined as aforesaid) of the company.".

Amendment of section 227.

21. In section 227 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Without prejudice to the provisions of sub-section (*1*), the auditor shall inquire—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.";

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein:

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.".

38 of 1949.

Amendment of section 228.

22. In section 228 of the principal Act, in sub-section (4), for the words "may, by rules made in this behalf, exempt", the words "may make rules providing for the exemption of" shall be substituted.

Insertion of new section 233B.

23. After section 233A of the principal Act, under the sub-heading *"Audit"*, the following section shall be inserted, namely:—

Audit of cost accounts in certain cases.

"233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (*d*) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be either a cost accountant within the meaning of the Cost and Works Accountants Act, 1959, or any such chartered accountant within the meaning of the Chartered Accountants Act, 1949, or other person, as possesses the prescribed qualifications.

23of 1959

38 of 1949

(2) An auditor under this section shall be appointed by the company in general meeting and the provisions of section 224 shall apply, as far as may be, in relation to such auditor as they apply in relation to an auditor appointed under that section.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the Company Law Board in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.".

Amendment of section 234A.

24. In section 234A of the principal Act,—

(*a*) in sub-section (1), after the words "make an application", the words "to the Tribunal or" shall be inserted;

(*b*) in sub-section (2), for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*c*) in sub-section (*3*),—

(*i*) for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*ii*) in the proviso, after the words "extracts from them", the words "or place identification marks on them or any part thereof" shall be inserted;

(*d*) in sub-section (*4*), after the word "search" and the word "searches", the words "or seizure" and the words "or seizures" shall respectively be inserted.

Amendment of section 240.

25. In section 240 of the principal Act,—

(*a*) in clause (*a*) of sub-section (*1*), for the words "to produce to an inspector", the words "to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government," shall be substituted;

(*b*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) The inspector may, with the previous approval of the Central Government, require any body corporate [other than a body corporate referred to in sub-section (*1*)] to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(*1B*) The inspector may keep in his custody any books and papers produced under sub-section (*1*) or sub-section (*1A*) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (*1A*) are furnished to the inspector, he shall return those books and papers to the body corporate concerned.";

(*c*) for sub-sections (*2*), (*3*), (*3A*) and (*4*), the following sub-sections shall be substituted, namely:—

"(*2*) An inspector may examine on oath—

(*a*) any of the persons referred to in sub-section (*1*); and

(*b*) with the previous approval of the Central Government, any other person,

in relation to the affairs of the company, other body corporate, managing agent, secretaries and treasurers or associate, as the case may be; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(*3*) If any person fails without reasonable cause or refuses—

(*a*) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (*1*) or sub-section (*1A*) to produce; or

(*b*) to furnish any information which it is his duty under sub-section (*1A*) to furnish; or

(*c*) to appear before the inspector personally when required to do so under sub-section (*2*) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(*d*) to sign the notes of any examination referred to in sub-section (*5*),

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, and also with a further fine which may extend to two hundred rupees for every day after the first during which the failure or refusal continues.";

(*d*) in sub-section (*5*), the word, brackets and figure "or (*4*)" shall be omitted.

Amendment of section 240A.

26. In section 240A of the principal Act,—

(*a*) in sub-section (*1*), after the words "make an application", the words "to the Tribunal or" shall be inserted;

(*b*) in sub-section (*2*), for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*c*) in sub-section (*3*)—

(*i*) for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*ii*) the following proviso shall be inserted at the end, namely:—

"Provided that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.";

(*d*) in sub-section (4), after the word "search" and the word "searches", the words "or seizure" and the words "or seizures" shall respectively be inserted.

Amendment of section 241.

27. In section 241 of the principal Act, in clause (*a*) of sub-section (2), after the words "any report", the brackets and words "(other than an interim report)" shall be inserted.

Insertion of new section 250A.

28. After section 250 of the principal Act, the following section shall be inserted, namely:—

Voluntary winding up of company, etc., not to stop investigation proceedings.

"250A. An investigation may be initiated under section 235, 237, 239, 247, 248 or 249 notwithstanding that—

(*a*) an application has been made for an order under section 397 or section 398; or

(*b*) the company has passed a special resolution for voluntary winding up,

and no investigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (*a*) has been made or a special resolution referred to in clause (*b*) has been passed.".

Amendment of section 252.

29. In section 252 of the principal Act,—

(*i*) in sub-section (*1*), for the words "public company", the words, brackets, figures and letter "public company (other than a public company which has become such by virtue of section 43A)" shall be substituted;

(ii) in sub-section (*2*), for the word "private", the word "other" shall be substituted.

Amendment of section 256.

30. In section 256 of the principal Act,—

(*i*) in sub-section (4), in sub-clause (*v*) of clause (b), the words, brackets and figures "or sub-section (3) of section 280" shall be omitted;

(*ii*) sub-section (5) shall be omitted.

Amendment of section 259.

31. To section 259 of the principal Act, the following proviso shall be added, namely :—

"Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.".

Amendment of section 264.

32. In section 264 of the principal Act,—

(*i*) in sub-section (*1*), for the words "other than a person", the words "other than a director retiring by rotation or otherwise or a person" shall be substituted;

(*ii*) for sub-section (*2*), the following sub-section shall be substituted, namely :—

"(*2*) A person other than—

(*a*) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or

(*b*) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office, or

(*c*) a person named as a director of the company under its articles as first registered,

shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent in writing to act as such director.".

Amendment of section 266.

33. In section 266 of the principal Act, sub-section (*4*) shall be omitted.

Omission of section 271.

34. Section 271 of the principal Act shall be omitted.

Amendment of section 273.

35. In section 273 of the principal Act, for the word and figures "to 272", the word and figures "and 272" shall be substituted.

Omission of section 280.

36. Section 280 of the principal Act shall be omitted.

Omission of section 281.

37. Section 281 of the principal Act shall be omitted.

Omission of section 282.

38. Section 282 of the principal Act shall be omitted.

Amendment of section 285.

39. In section 285 of the principal Act, for the words beginning with "three calendar months" and ending with "and the date of the next meeting", the words "three months and at least four such meetings shall be held in every year" shall be substituted.

Insertion of new section 294A.

40. After section 294 of the principal Act, the following section shall be inserted, namely :—

Prohibition of payment of compensation to sole selling agents for loss of office in certain cases.

"294A. (*1*) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases :—

(*a*) where the appointment of the sole selling agent ceases to be valid by virtue of sub-section (*2A*) of section 294;

(*b*) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation;

(*c*) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(*d*) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in, the conduct of his duty as the sole selling agent;

(*e*) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

(*2*) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period.".

Amendment of section 303.

41. In section 303 of the principal Act, in sub-section (*2*), the words "or in any of the particulars contained in the register" and the proviso shall be omitted.

Amendment of section 309.

42. In section 309 of the principal Act,—

(*i*) in sub-section (*1*), the following shall be added at the end, namely:—

"and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

(*a*) the services rendered are of a professional nature, and

(*b*) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession".

(*ii*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration—

either

(*a*) by way of a monthly, quarterly or annual payment with the approval of the Central Government;

or

(*b*) by way of commission if the company by special resolution authorises such payment:

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(*i*) one per cent. of the net profits of the company, if the company has a managing or whole-time director, a managing agent or secretaries and treasurers or a manager;

(*ii*) three per cent. of the net profits of the company, in any other case:

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent. or, as the case may be, three per cent. of its net profits.".

Amendment of section 310.

43. To section 310 of the principal Act, the following proviso shall be added, namely:—

"Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a committee thereof attended by any such director and the amount of such fee after such increase does not exceed two hundred and fifty rupees.".

Amendment of section 314.

44. In section 314 of the principal Act,—

(*a*) in sub-section (*1*)—

(*i*) for the words "previous consent", the word "consent" shall be substituted;

(*ii*) for the proviso, the following provisos shall be substituted, namely:—

"Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit:

Provided further that where a relative of a director or a firm in which such relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later.";

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) If any office or place of profit is held in contravention of the provisions of sub-section (*1*), the director, partner, relative, firm, private company, managing agent, secretaries and treasurers or the manager, concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

Amendment of section 318.

45. In section 318 of the principal Act, in sub-section (*3*), in clause (*c*), the word and figures "section 280," shall be omitted.

Amendment of section 370.

46. In section 370 of the principal Act,—

(*a*) in sub-section (*1*)—

(*i*) the words "which is under the same management as the lending company" shall be omitted;

(*ii*) the following provisos shall be added at the end, namely:—

"Provided that no special resolution shall be necessary in the case of loans made to other bodies corporate not under the same management as the lending company where the aggregate of such loans does not exceed ten

per cent. of the aggregate of the subscribed capital of the lending company and its free reserves:

Provided further that the aggregate of the loans made to all bodies corporate shall not exceed without the prior approval of the Central Government—

(*a*) thirty per cent. of the aggregate of the subscribed capital of the lending company and its free reserves where all such other bodies corporate are not under the same management as the lending company;

(*b*) twenty per cent. of the aggregate of the subscribed capital of the lending company and its free reserves where all such other bodies corporate are under the same management as the lending company.

Explanation.—If a special resolution has been passed by the lending company authorising the making of loans up to the limit of thirty per cent. of the aggregate specified in clause (*a*), or, as the case may be, of twenty per cent. of the aggregate specified in clause (*b*), of the second proviso, then, no further special resolution or resolutions shall be deemed to be necessary for the making of any loan or loans within such limit.";

(*b*) in sub-section (*1C*), in clause (*b*), after the words "provided by the lending company", the words "in relation to any such body corporate" shall be inserted;

(*c*) in sub-section (*1D*), for the words "every such loan, guarantee or security", the words, brackets, figure and letter "every loan, guarantee or security referred to in sub-section (*1C*)" shall be substituted;

(*d*) in sub-section (*2*), in clause (*a*), for sub-clause (*iii*), the following sub-clauses shall be substituted, namely:—

"(*iii*) by a banking company, or an insurance company, in the ordinary course of its business;

(*iv*) by a private company, unless it is a subsidiary of a public company;

(*v*) by a company established with the object of financing industrial enterprises;";

(e) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Where before the commencement of the Companies (Amendment) Act, 1965, any loan, guarantee or security has been made, given or provided by a company which could not have been made, given or provided under this section as amended by that Act, and such loan, guarantee or security is outstanding at such commencement, the company shall, within six months from such commencement, enforce the repayment of the loan made or, as the case may be, revoke the guarantee given or the security provided, notwithstanding any agreement to the contrary:

Provided that the aforesaid period of six months may be extended by the Central Government on an application made to it in that behalf by the company.".

Amendment of section 372.

47. In section 372 of the principal Act, in sub-section (13), after the word, brackets and figure "sub-section (2)", the words, brackets and figure "and sub-section (5)" shall be inserted.

Amendment of section 391.

48. In section 391 of the principal Act, to sub-section (2), the following proviso shall be added, namely:—

"Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.".

Amendment of section 394.

49. In section 394 of the principal Act, to sub-section (1), the following provisos shall be added, namely:—

"Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board

or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (*iv*) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.".

Insertion of new section 394A.

50. After section 394 of the principal Act, the following section shall be inserted, namely:—

Notice to be given to Central Government for applications under sections 391 and 394.

"394A. The Court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.".

Amendment of section 395.

51. In section 395 of the principal Act,—

(*a*) in sub-section (*3*), for the words "the transferor company shall thereupon register the transferee company as the holder of those shares:", the following shall be substituted, namely:—

"the transferor company shall—

(*a*) thereupon register the transferee company as the holder of those shares, and

(*b*) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company:";

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) (*a*) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely:—

(*i*) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such

offer shall be accompanied by such information as may be prescribed;

(*ii*) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;

(*iii*) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;

(*iv*) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (*i*) or which sets out such information in a manner likely to give a false impression; and

(*v*) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(*b*) Whoever issues a circular referred to in sub-clause (*iii*) of clause (*a*), which has not been registered, shall be punishable with fine which may extend to five hundred rupees.".

Insertion of new section 396A.

52. In the principal Act, in Chapter V of Part VI, after section 396, the following section shall be inserted, namely:—

Preservation of books and papers of amalgamated company.

"396A. The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.".

Amendment of Chapter VII of Part VI.

53. (*1*) In the principal Act, in Chapter VII of Part VI,—

(*a*) in the heading, for the words "ADVISORY COMMISSION", the words "ADVISORY COMMITTEE" shall be substituted;

(*b*) for sections 410, 411, 412, 413, 414 and 415, the following section shall be substituted, namely:—

Appointment of Advisory Committee.

"410. For the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of this Act as may be referred to it by that Government or Board, the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications.".

(2) All cases pending before the Advisory Commission immediately before the commencement of this Act shall stand transferred to the Central Government on such commencement and the Central Government may dispose of such cases in such manner as it deems fit.

Amendment of section 497.

54. In section 497 of the principal Act,—

(*a*) in sub-section (*3*), for the words "Registrar a copy of the account, and shall make a return to him", the words "Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them" shall be substituted;

(*b*) for sub-sections (*5*) and (*6*), the following sub-sections shall be substituted, namely:—

"(*5*) The Registrar, on receiving the account and either the return mentioned in sub-section (*3*) or the return mentioned in sub-section (*4*), shall forthwith register them.

(*6*) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (*3*) or the return mentioned in sub-section (*4*), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(*6A*) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(*6B*) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.".

55. In section 509 of the principal Act,— Amendment of section 509.

(*a*) in sub-section (*3*), for the words "Registrar a copy of the account, and shall make a return to him", the words "Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them", shall be substituted;

(*b*) for sub-sections (*5*) and (*6*), the following sub-sections shall be substituted, namely:—

"(*5*) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (*3*) or the return mentioned in sub-section (*4*), shall forthwith register them.

(*6*) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (*3*) or the return mentioned in sub-section (*4*), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(*6A*) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(*6B*) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.".

Insertion of new section 511A.

56. After section 511 of the principal Act, the following section shall be inserted, namely:—

Application of section 454 to voluntary winding up.

'511A. The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the Court except that references to—

(*a*) the Court shall be omitted;

(*b*) the Official Liquidator or the provisional liquidator shall be construed as references to the liquidator; and

(*c*) the "relevant date" shall be construed as references to the date of commencement of the winding up.'.

Amendment of section 593.

57. In section 593 of the principal Act, in clause (*c*), the words "or the particulars contained in the list of the directors and secretary" shall be omitted.

Substitution of new sections for section 635A.

58. For section 635A of the principal Act, the following sections shall be substituted, namely:—

Protection of acts done in good faith.

"635A. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

Non-disclosure of information in certain cases.

635AA. Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any court, tribunal or other authority whence he got any information which—

(*a*) has led the Central Government to direct a special audit under section 233A or to order an investigation under section 235, 237, 247, 248 or 249; or

(*b*) is or has been material or relevant in connection with such special audit or investigation.".

Insertion of new section 637B.

59. After section 637A of the principal Act, under the sub-heading *"Grant of approval, etc., subject to conditions and levy of fees on applications"*, the following section shall be inserted, namely:—

Condonation of delays in certain cases.

"637B. Notwithstanding anything contained in this Act,—

(*a*) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay;

(*b*) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.".

Insertion of new section 640B.

60. After section 640A of the principal Act, under the sub-heading *"Schedules, Forms and Rules"*, the following section shall be inserted, namely:—

Forms of, and procedure in relation to, certain applications.

"640B. (*1*) Every application made to the Central Government under section 259, 268, 269, 310, 311, 326, 328, 329, 332, 343, 345, 346, 352, 408, or 409 shall be in such form as may be prescribed.

(*2*) (*a*) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(*b*) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(*c*) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(*d*) Nothing in clause (*a*), (*b*) or (*c*) shall apply to a private company which is not the managing agent of a public company.".

Amendment of Schedule IA.

61. In Schedule IA of the principal Act, serials 23 to 49 (both inclusive) shall be omitted.

Minor amendments.

62. The amendments directed in the Schedule, being amendments relating to matters of minor detail or of a clarificatory or consequential nature, shall be made in the sections of the principal Act specified therein.

THE SCHEDULE

(*See* section 62)

MINOR AMENDMENTS IN THE COMPANIES ACT, 1956

Section 2.—In clause (*49A*), for "Tribunal constituted", substitute "Companies Tribunal constituted".

Section 10A.—In sub-section (*1*), for "constitute a Tribunal", substitute "constitute a Tribunal to be known as the Companies Tribunal".

Section 44.—In clause (*b*) of sub-section (*1*), for "fourteen", substitute "thirty".

Section 75.—For "one month", in all places, substitute "thirty days".

Section 95.—In sub-section (*1*), for "one month", substitute "thirty days".

Section 97.—In sub-section (*1*), for "fifteen", substitute "thirty".

Section 107.—In sub-section (*5*), for "fifteen", substitute "thirty".

Section 125.—For "twenty-one", in all places, substitute "thirty".

Section 127.—In sub-section (*1*), for "twenty-one", in all places, substitute "thirty".

Section 128.—For "twenty-one", substitute "thirty".

Section 137.—In sub-section (*1*), for "fifteen", substitute "thirty".

Section 138.—In sub-section (*1*), for "twenty-one", substitute "thirty".

Section 146.—For "twenty-eighth" and "twenty-eight", substitute respectively "thirtieth" and "thirty".

Section 156.—For "Court" and "fourteen", in all places, substitute respectively "Tribunal" and "thirty".

Section 157.—In sub-section (*2*), for "one month", in both places, substitute "thirty days".

Section 159.—In sub-section (*1*), for "forty-two", substitute "sixty".

Section 160.—In sub-section (*1*), for "forty-two", substitute "sixty".

Section 192.—In sub-section (*1*), for "fifteen", substitute "thirty".

Section 193.—For "fourteen", in all places, substitute "thirty".

Section 220.—In sub-section (*1*), for "at the same time as the copy of the annual return referred to in section 161", substitute "within thirty days from the date on which the balance-sheet and the profit and loss account were so laid".

Section 303.—In sub-section (*2*), for "twenty-eight", in all places, substitute "thirty".

Section 394.—In sub-section (*3*), for "fourteen", substitute "thirty".

Section 404.—In sub-section (*3*), for "fifteen", substitute "thirty".

Section 445.—In sub-section (*1*) and in sub-section (*1A*), for "one month", substitute "thirty days".

Section 481.—In sub-section (*2*); for "fourteen", substitute "thirty".

Section 509.—In sub-section (*6*), for "twenty-one", substitute "thirty".

Section 516.—In sub-section (*1*), for "twenty-one", substitute "thirty".

Section 559.—In sub-section (*2*), for "twenty-one", substitute "thirty".

Section 592.—In sub-section (*1*), for "one month", substitute "thirty days".

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Secy. to the Govt. of India.

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